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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,291	08/20/2003	Richard J. Rudy	P3198	7205
30143	7590	09/14/2004		
TODD N. HATHAWAY			EXAMINER	
119 N. COMMERCIAL ST. #620			BUI, BRYAN	
BELLINGHAM, WA 98225				
			ART UNIT	PAPER NUMBER
			2863	

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/645,291	RUDY, RICHARD J.
Examiner	Art Unit	
Bryan Bui	2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 20 August 2003.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1,2,4-6,11,12,15-18 and 20 is/are rejected.  
7)  Claim(s) 3,7-10,13,14,19,21 and 22 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/28/03.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-2, 4-6, 11-12, 15-18, and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault (Pub.No.US 2002/0124017A1).
3. With respect to claims 1 and 18, Mault teaches an integral PDA/dietary scale for measuring weight of food portion size (e.g. paragraph 0006, and figure 10) comprising a bar code reader for identifying a food product contained in a package from a bar code displayed thereon (e.g. paragraph 0027); means (computing device/PDA) for retrieving predetermined food content data per unit weight of the food product from a database containing predetermined food content data per unit weight for a plurality of food products (e.g. paragraph 0026 and claim 10); a scale for determining a measured weight of serving of a the food product obtained from the package (e.g. paragraphs 0006, 0009); and means (computing device/PDA) for comparing the measured weight of said serving of the food product with the predetermined food content data per unit

weight of the food product so as to calculate a nutritional content of said serving of the food product (e.g. paragraphs 0009, 0010).

4. With respect to claim 2, Mault teaches means (computing device/PDA) for comparing the measured weight with the predetermined food content data per unit weight of the food product comprise electronic memory having predetermined food content for a plurality of food products entered therein (e.g. paragraphs 0024, 0026 and claim 10).

5. With respect to claims 4-6, and 20, Mault teaches means for accumulatively summing calculated nutritional contents of a plurality of serving of food products over a predetermined interval of time with a predetermined gal for intake of the nutritional contents for the interval of time (e.g. paragraph 0025 and claims 3, 10).

6. With respect to claims 11-12, Mault teaches means for manually entering the food content data for said food product and comprising a manually operable keypad (e.g. figures 4-6, item 10).

7. With respect to claim 15, Mault teaches menas for weighing a serving of said food product comprises a strain bridge (gauge) having an electronic output (e.g paragraph 0042, and claims 1, 9).

8. With respect to claims 16-17, Mault teaches the barcode reader comprises a barcode scanner mounted in wand attached to housing of a scale, and a stationary barcode scanner mounted behind a window in a housing of a scale (paragraphs 0026, 0027, 0039 and figures 2,5).

***Allowable Subject Matter***

9. Claims 3, 7-10, 13-14, 19, and 21-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryan Bui whose telephone number is 571-272-2271. The examiner can normally be reached on M-Th from 7am-4pm, and Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Barlow can be reached on 571-272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BB

09/08/2004

**BRYAN BUI**  
**PRIMARY EXAMINER**

